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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/567,804

02/09/2006

Philippe Gregoire

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Georgia-Pacific LLC

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EXAMINER

EBRAHIM, NABILA G

ART UNIT

PAPER NUMBER

1618

MAIL DATE

DELIVERY MODE

06/21/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/567,804	Applicant(s) GREGOIRE ET AL.	
	Examiner NABILA G. EBRAHIM	Art Unit 1618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03/09/2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The receipt of the amended list of claims and Applicant's remarks dated 03/09/2010 is acknowledged.

In view of amending the claims, the following new grounds of rejection are necessitated.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the **written description** requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims recite "sufficiently fine so as to conform to the underlying exfoliating elements". Note, this specific recitation was not found in the specification. The phrase "so as to conform" does not provide sufficient description of how conforming the underlying elements should be achieved. The specification discloses that "the advantage of the fibrous web is to offer a certain resistance to any bonding of fibers in another manner while remaining fine enough not to mask the corrugation of the underlying elements". There is not enough description to help a person having ordinary skill in the art to envision that Applicant was in

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possession of the way of adapting the second layer to conform to the underlying exfoliating elements thereby forming a plurality of protuberances.

The claims as amended **are further rejected** under U.S.C. §112 first paragraph for reciting **a new matter** as follows:

Claims 1-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims recite “the second layer being sufficiently fine so as to conform to the underlying exfoliating elements thereby forming a plurality of **protuberances** at an outer surface of the second layer for effecting exfoliation”. The word “protuberances” is used in the specification to describe the protrusions in Fig. 4, which depicts only one embodiment. However, as recited in amended claims 1-18 the term is used generally without limitation. It is noted that the specification only discloses the term “corrugations” which firstly, have a different meaning and secondly restricted to the embodiment of Fig. 1. In accordance with MPEP 714.02 applicants should specifically point out support for the generic concept of claim 1 using the expression “protuberances” where it reads on all embodiments.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

In view of amending the claims, the rejection of claims 1-18 under 35 U.S.C. 112, second paragraph, as set forth in the office action dated 11/9/2009 is hereby withdrawn.

Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims –as amended- recite “sufficiently fine so as to conform to the underlying exfoliating elements” The phrase is vague since the “sufficiently fine” are not sufficiently defined or explained to be compared to the prior art. The specification discloses that “The advantage of the fibrous web is to offer a certain resistance to any bonding of fibers in another manner while remaining fine enough not to mask the corrugation of the underlying elements”. The disclosure is not clear since the term “fine enough” is not further explained or exemplified. Applicants are required to make clear and precise the terms that are used to define the invention whereby the metes and bounds of the claimed invention can be ascertained.

. Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

In view of amending the claims, the rejection of claims 1-17 and 19 under 35 U.S.C. 102(b) as being anticipated by Michaud US 7037866 is hereby withdrawn.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Puvvada et al. US 6902338 (Puvvada) in view of Michaud US 7037866, published 2/5/2004 (Michaud) in view of Vayrette US publication 2002/0107528 (Vayrette), the reference is provided by Applicant in the information Disclosure Statement.

Instant claimed invention is directed to a pad having two layers which are made of fibrous material and an exfoliant element is distributed in between the two layers.

Puvvada teaches a personal cleansing article in the form of a pouch (abstract). The outer layers of the pouch are of a porous material wherein included a plurality of solid bars. The receptacle have different ingredients that combine together to provide a unique benefit or fragrance. The compositions may also be inert and provide e.g. a massage or exfoliation type action and the like (col. 2, lines 54-56, col. 3, line 11 and claim 7). Note that to adapt a pouch to massage and/or exfoliate the skin, then the outer layer is expected to be fine enough to conform to the exfoliant inside the pouch as required by instant amended claim 1. The two outer layers of the pouch comprise non-woven substrates comprised of a variety of materials both natural such as cellulose fibers, cotton fibers and synthetic such as polypropylene and polyester. The suitable non-woven materials are also disclosed (col. 11, lines 11-57). Note that the word “pad” is recited in the preamble of the claim where the preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*,

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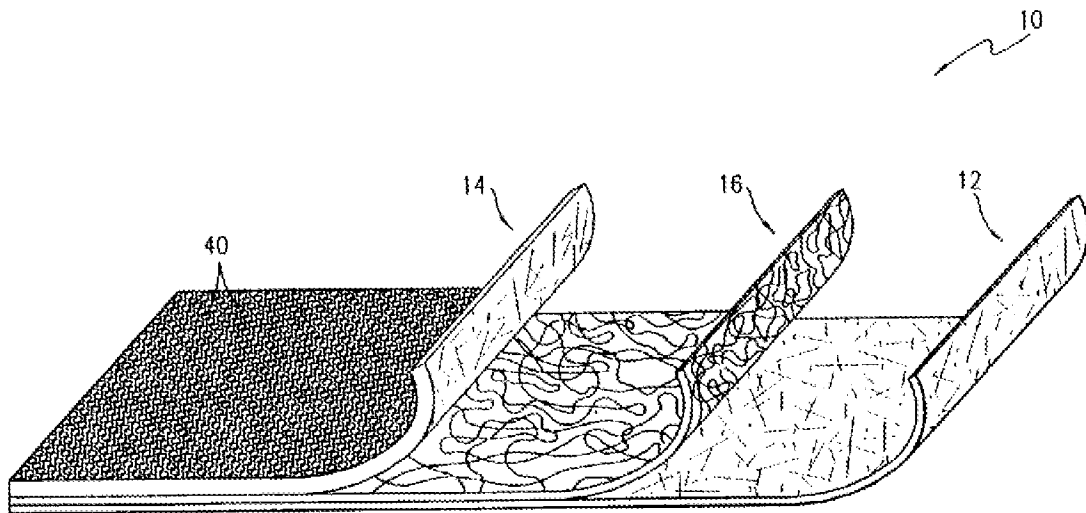
187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Note also that forming a plurality of protuberances is expected to be the same in Puvvada since Puvvada's invention is composed of two layers and an exfoliant is distributed between the two layers (see figure 1 in Puvvada). Finally, the functional limitations such as "to attenuate mechanical effects of the exfoliating element" are inherent since Puvvada teaches the same layers made of the same materials and are used for the same purpose of gentle cleansing and exfoliating.

Puvvada teaches the exfoliant distributed between two fibrous layers in irregular and/or intermittent form. However, the reference is deficient in disclosing the exfoliant as a full layer.

Michaud teaches a fabric having first and second layers 12, 14. In the preferred embodiment, the first **layer 12** is a carded nonwoven web 15 having a basis weight in the range of about 18 to 45 grams per square meter which is formed of synthetic staple fibers such as rayon, acrylic, polyester, polypropylene, polyethylene, polyolefins, nylon, bicomponent and others (col. 3, lines 14+). **Layer 14** of the nonwoven sheet 10 is a carded nonwoven web 18 consisting of essentially the same staple fibers as the first layer 12 (synthetic staple fibers such as rayon, acrylic, polyester, polypropylene, polyethylene, polyolefins, nylon, bicomponent and others), but with increased basis weight. The basis weight of the second layer 14 is preferably in the range of about 45 to 180 grams per square meter (col. 3, lines 29+). Each of the first and second layers are carded webs formed by a dry-laid process which is well known in the art (col. 2, lines 5-7). The third **layer 16** is preferably a spunbond web 17 having a basis weight in the

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range of about 15 to 45 g/square meter which is formed from a thermoplastic material. A spunbond web is typically made from essentially continuous filaments formed of thermoplastic materials (col. 3, lines 22+). In the preferred embodiment, the third, spunbond layer of this invention is sandwiched between the first and second layers which are then hydroentangled with one another using conventional techniques (col. 2, lines 20+). Note that the layer 16 is rough and is considered as exfoliant in the fabric and is present in the middle layer.



("thermoplastic material" refers to a polymer which softens when exposed to heat and returns to its original condition at room temperature. Styrene polymers and copolymers, vinyls, polyethylenes, polypropylenes and acrylics are examples of thermoplastic materials), see (col. 2, lines 63+)

The limitations recited in instant claims 2-4 are shown in the figure supra because the exfoliating layer 16 forms a layer, evenly distributed, and continuous.

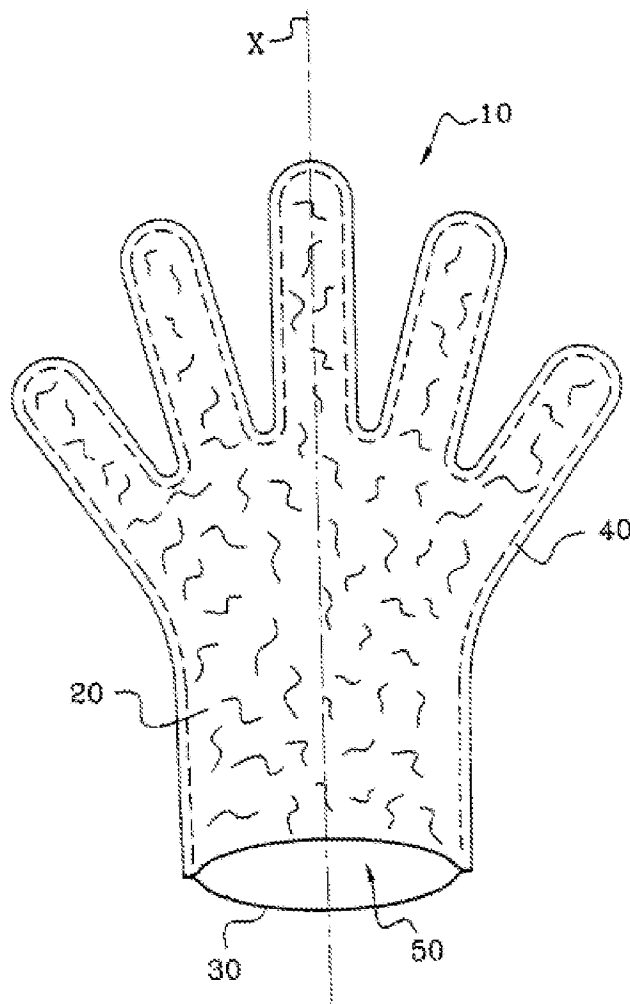
Claim 19 recites a process of manufacturing the pad. Michaud discloses the same process (claim 13). The method includes (a) providing a first web formed solely of synthetic staple fibers having an inner surface and a smooth outer surface; (b) providing a second web formed solely of synthetic staple fibers having an inner surface and an outer surface; (c) providing a third web of spunbond filaments; (d) locating said third web between said inner surfaces of said first and second webs; (e) hydroentangling said staple fibers of said first and second webs with said spunbond filaments of said third web to connect said webs together; (f) forming a textured pattern on said outer surface of said second web; and (g) applying a binder material over said textured pattern on said outer surface of said second web.

Claim 8 recites that a sheet of fibers to be formed on a machine of the Rando Webber type and claim 17 recites that the fibers are bonded to each other by hydraulic or mechanical bonding. However, the two are product by process recitations wherein the product-by-process claims are limited and defined by the process; determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by- process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process (See MPEP 2113).

Claim 14 has been amended to include a first layer and second layer of exfoliating element. However, it would be obvious to a person having ordinary skills to add one or more layers to the pad invented by Michaud and specifically to add another layer of exfoliating element to enhance the effect of exfoliation targeted by the instant claims.

Thus, it would have been obvious to a person having ordinary skill in the art at the time the instant invention was made to convert the pouch disclosed by Puvvada into a sheet having three layers as disclosed by Michaud to control the distribution of the exfoliant regularly between the two fibrous layers.

Neither Puvvada nor Michaud teaches the thermofusing the fibers to be at least partially bonded and the types of exfoliants.



Vayrette teaches and exemplary embodiment shown in FIG. 1, the envelope 10 may be made from two sheets 20, 30 of nonwoven material. The first sheet 20 may

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have an abrasive function configured for exfoliation of a keratinous surface. The first sheet 20 may comprise a nonwoven material of fibers of thermoplastic synthetic nature, for example. The fibers may be fibers of polyester, nylon, or polyolefin, for example. They may optionally be combined with natural fibers of a cellulose type. An **abrasive** layer of polypropylene thermoplastic **filaments** may be deposited on the fibers. The surface of the first sheet 20 that constitutes the first outer face 1 of the glove may also have embossing. Alternatively, a nonwoven material covered with drops of ink or with bumps of any other type making it possible to obtain a sufficient roughness to cause exfoliation may be used [0045]. The second sheet 30 forming a second outer surface 2 may have a cleansing function allowing dead cells to be removed after exfoliation. The second sheet 30 also may comprise a nonwoven material of fibers of thermoplastic synthetic nature. The fibers may be, for example, polyolefin, nylon, or polyester fibers. Such a sheet 30 may have a relatively soft surface state [0046]. The nonwoven fibrous materials referred to in the invention include materials made of a plurality of fibers, wherein the materials are formed other than by weaving the fibers together. The materials may be formed by a variety of techniques known to those skilled in the art for forming webs of nonwoven fibrous material, including, for example, conventional papermaking techniques, followed by heat treatment to enhance the roughness of the material [0008].

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to thermally fuse at least some of the thermoplastic fibers disclosed by Michaud using heat as taught by Vayrette because Vayrette

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discloses that using heat to such fibers enhance the roughness of the material. The artisan would expect success in having a pad for skin care comprising exfoliating effects.

Response to Arguments

Applicant's arguments with respect to claims 1-19 have been considered but are moot in view of the new ground(s) of rejection.

Applicant arguments are based on Michaud alleging that the reference does not include exfoliant in the middle layer and that the new amendments overcome the rejections.

The arguments render moot in view of relying upon Puvvada et al.

Applicant also argues that secondary reference Vayrette discloses deposition of abrasive particles *on an outer surface* of the envelope 10, which is wholly contrary to the deposition of exfoliating elements *between two layers*. This was not found persuasive because Vayrette teaches the polypropylene abrasive regardless of its position compared to the other layers. It is respectfully noted that Puvvada and Michaud teach the order of the layering recited in the instant claims.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NABILA G. EBRAHIM whose telephone number is (571)272-8151. The examiner can normally be reached on 9:00AM - 6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hartley can be reached on 571-272-0616. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/NABILA G EBRAHIM/
Examiner, Art Unit 1618

/Michael G. Hartley/
Supervisory Patent Examiner, Art
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